Bannum Place of Saginaw, LLC *and* Local 406, International Brotherhood of Teamsters (IBT) *and* Ernie Ahmad. Cases 07–CA–207685, 07–CA–211090, and 07–CA–215356

April 30, 2021

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS EMANUEL AND RING

On May 29, 2020, Administrative Law Judge Ira Sandron issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions as further explained below and to adopt the recommended Order as modified and set forth in full below.[3]

Background

The Respondent operates a halfway house in Saginaw, Michigan, from which it provides residential reentry services to formerly incarcerated individuals under a contract with the Federal Bureau of Prisons (BOP).

In mid-2017,[4] employee Greg Price contacted Local 406, International Brotherhood of Teamsters (the Union) to inquire about organizing the Respondent's work force. The Union met with employees on several occasions and filed an election petition with the Board on September 5. The Union won the November 7 election and was certified as the employees' exclusive bargaining representative on November 15.

The complaint alleged that the Respondent committed numerous violations in response to the Union's campaign. The judge found that the Respondent violated Section 8(a)(3), (4), and (1) by discharging prounion employee Price; Section 8(a)(3) and (1) by discharging prounion employee Ernie Ahmad, scheduling him to work on the second shift, denying his vacation requests, and requiring him to submit a doctor's note for calling in sick; and Section 8(a)(1) by interrogating employees Price, Ahmad, and Sharda Nash about their union activities or sympathies, and by threatening Price with closure of the facility. We affirm those findings as explained below. The judge further found that the Respondent violated Section 8(a)(1) in a conversation with Ahmad and Nash by threatening facility closure, wage reductions and stricter enforcement of rules if the Union prevailed. As explained below, we find it unnecessary to decide whether the Respondent's statements amounted to three independent violations, but we agree that the statements taken as a whole violated Section 8(a)(1) by threatening employees with adverse consequences if they unionized.

Discussion

I. GREG PRICE

In June 2017, Price told Facility Director Kenneth Schram, the only onsite supervisor, of his intention to form a union. Thereafter, Price initiated organizing efforts by discussing union representation with his coworkers, including Ahmad, Nash, and Melanie Turner. Price next contacted the Union, which scheduled informational meetings at the Union's office for June 19 and August 7, 21, and 31.

Prior to the June 19 meeting, Price told Schram that he, Turner, and Ahmad planned to attend. Schram replied that he supported unionization because, as employees' lot improved, his might as well. Schram added that Price and Turner could attend the meeting on the clock and call the time they spent at the meeting their lunch.[5]

On June 19, Price left the facility at 2:30 p.m. and attended the meeting. Upon his return at 4:15 p.m., he discussed the meeting with Schram. Price's timecard does not reflect any absence and he was paid for a full day of work.

[1] The Respondent excepted to the judge's denial of its pretrial motion to dismiss the complaint based on a claim that the Respondent is a joint employer with the Federal Bureau of Prisons and, therefore, the Board lacks jurisdiction. We affirm the judge's denial as the Respondent's joint-employer claim was considered and rejected in the representation-case hearing, and Sec. 102.67(g) of the Board's Rules and Regulations precludes the re-litigation in any subsequent unfair labor practice proceedings of any issue that was raised in a representation-case proceeding.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We have amended the judge's conclusions of law consistent with our findings herein. We shall modify the judge's recommended Order to conform to our findings and to the Board's standard remedial language, and in accordance with our recent decision in *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020), and *Cascades Containerboard Packaging–Niagara*, 370 NLRB No. 76 (2021). We shall substitute a new notice to conform to the Order as modified.

[4] All dates are in 2017 unless otherwise noted.

[5] Ahmad, who worked the midnight shift, could attend the meeting on his own time.

Prior to the August 7 meeting, Schram joined Price, Ahmad, and Turner as they discussed the meeting. Schram repeated that he supported the employees' organizing efforts and would allow Price and Turner to attend union meetings on the clock.

On August 7, Price reminded Schram about the meeting and then he and Turner left to attend the 1- to 2-hour meeting. Price was paid for the entire day.

On August 21, when Price returned from another 1- to 2-hour union meeting, he and Schram had a conversation about the meeting in Schram's office. Schram asked him what was discussed. Price replied wages (including cost of living and shift premiums), better lighting, cameras around the facility, and a request for retirement benefits. Schram shook his head and stated that employees were asking for "way too much," and that John Rich, the president and corporate counsel of the Respondent's parent company, would not approve any of the requests. Schram added that Rich would just shut the facility down as he, Schram, would do if he were in Rich's position. Price's timecard did not reflect any absences for that day, and he received full pay.

On September 27, Price was scheduled to work the 12 p.m. to 9 p.m. shift. He was also scheduled to be a witness at the representation-case hearing that day. Price clocked in at 5:31 a.m. and, in accordance with the Respondent's practice that employees note their whereabouts in the facility's logbook, he wrote "Court versus Bannum" in the logbook and left for the hearing. When Schram arrived at the facility around 8 a.m., an employee brought Price's notation in the logbook to his attention. When Price returned to the facility at 2:38 p.m., he and Schram saw each other before Price punched out. Schram did not speak to Price about his absence, and he neither disciplined nor initiated discipline against Price.

Later on September 27, Schram's supervisor, Manager Katrina Teel, who had attended the representation-case hearing, telephoned Schram and inquired about Price.[6] Schram told Teel about Price's early punch-in, his notation in the logbook, and his return and clock out. Shortly thereafter, Teel informed President Rich that Price had been at the hearing when his shift started, failed to show up for his shift, and did not work all day despite clocking in. Teel and Vice President of Operations Sandra Allen, who, like Rich, are both based out of state, also informed Rich that Price failed to attend a Duty Hearing Officer (DHO) hearing that day concerning an inmate's violation of the halfway-house rules. Rich testified that he decided that Price's conduct warranted termination, especially since Price was a case manager and, therefore, designated as key staff. Rich did not consult with Schram or speak to Price before deciding to discharge Price.

On September 28, Schram informed Price that "[t]hey are terminating your employment for abandoning work yesterday, not working 12-9." Price reminded Schram that he had to attend the representation-case hearing and asked why Schram had not called him about his absence as he usually did for other employees. Schram responded that the Respondent would mail Price his final paycheck. The Respondent had never previously disciplined Price and it provided him with no documentation about his discharge.

Alleged Interrogation and Threat of Facility Closure

The judge found, and we agree, that Schram's August 21 threat to close the facility violated Section 8(a)(1). The judge also found that, on its own, Schram's questioning of Price would not constitute an unlawful interrogation, but that Schram's "overt threat" of closure "tainted the attendant interrogation and made it similarly coercive," and, therefore, the Respondent violated Section 8(a)(1) by unlawfully interrogating Price. We affirm the judge's finding of an unlawful interrogation.

The Board applies a totality-of-the-circumstances test to determine whether an interrogation is coercive of employees' rights under the Act. See *Rossmore House*, 269 NLRB 1176, 1177 (1984), enfd. sub nom. *HERE, Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). Under this test, the Board considers whether the employee is an open and active union supporter, whether there is a history of employer antiunion hostility or discrimination, the nature of the information sought (especially if it could result in action against individual employees), the position of the questioner in the company hierarchy, and the place and method of interrogation. See id. The Board also considers the timing of the interrogation, the truthfulness of the employee's reply, and whether other unfair labor practices had occurred or were occurring. See *Vista Del Sol Healthcare*, 363 NLRB No. 135, slip op. at 17 (2016); *Parts Depot, Inc.*, 332 NLRB 670, 673 (2000) ("Where the interrogation is accompanied by threats or other violations of Section 8(a)(1) . . . there can be no question as to the coercive effect of the inquiry."), enfd. 24 Fed.Appx. 1 (2001).

Several considerations weigh in favor of finding Schram's questioning of Price unlawful. First, Director Schram was the highest-ranking individual at the facility as well as Price's immediate supervisor. Second, the one-

[6] Schram could not recall the specifics of Teel's inquiry, but thought she had asked "if [Price] was there" or "what [Price's] scheduled workday was." Teel did not testify.

on-one inquiry occurred in Schram's office upon Price's return from the union meeting.[7] See *Vista Del Sol Health Services*, supra (finding that the place and method of interrogation weighed in the General Counsel's favor as it occurred in the supervisor's office where nobody else was present and doors were closed). Lastly, as the judge found and we affirm, Schram also violated Section 8(a)(1) in that conversation by threatening closure of the facility.[8] Accordingly, in light of the status of the questioner; the place, method, and timing of the questioning; and the concomitant unfair labor practice, we find that the Respondent unlawfully interrogated Price in violation of Section 8(a)(1).

Alleged Unlawful Discharge

We affirm the judge's application of *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), and his finding that the Respondent's discharge of Price violated Section 8(a)(3), (4), and (1).[9] Under *Wright Line*, the General Counsel must show that an employee's protected activity was a motivating factor in an adverse employment action. The Board has often described this burden as requiring the General Counsel to demonstrate that the employee engaged in protected conduct, the employer knew or suspected that the employee engaged in such conduct, and the employer harbored animus. In *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120 (2019), however, the Board clarified that "the General Counsel does not *invariably* sustain his burden by producing—in addition to evidence of the employee's protected activity and the employer's knowledge thereof—*any* evidence of the employer's animus or hostility toward union or other protected activity. Instead, the evidence must be sufficient to establish that a causal relationship exists between the employee's protected activity and the employer's adverse action against the employee." Id., slip op. at 8 (emphasis in original). If the General Counsel meets this burden, the burden shifts to the employer to show that it would have taken the same adverse action in the absence of protected activity.

As the judge found, Price "spearheaded the union organizing campaign" and attended union organizing meetings. Schram had actual knowledge of this and, along with Teel[10] and President Rich, of Price's attendance at the representation-case hearing on September 27. Schram exhibited animus by interrogating Price and threatening him with facility closure in the face of unionization.[11] Additionally, the timing of the discharge, cursory investigation, and disparate treatment support a finding of a causal relationship between Price's protected activity and his discharge.[12] Accordingly, we affirm the judge's finding that the General Counsel met his initial burden.[13]

Turning to the Respondent's burden, we affirm the judge's finding that the Respondent failed to demonstrate that it would have discharged Price absent his protected activity. We agree with the judge that (1) Schram "condoned or tacitly approved Price's conduct" on September 27, which we emphasize was merely a continuation of conduct Schram knew of and explicitly approved—Price's attendance of union meetings while on the clock; (2) the

[7] Although the record indicates that Schram and Price occasionally had casual one-on-one conversations about the Union, some of which occurred in Schram's office, the Board has made it clear that even if an interrogation occurs in a casual manner during a friendly conversation, the unlawful effect is not lessened. See *Abex Corp.*, 162 NLRB 328, 329 (1966); see also *Washington Fruit & Produce Co.*, 343 NLRB 1215, 1216 fn. 9 (2004) ("A supervisor's statements may be coercive regardless of his friendship with an employee and . . . whether the remark was well intended. . . . [T]he proper test . . . is whether the supervisor's comments reasonably tended to interfere with the employees' free exercise of their Sec. 7 rights.") (internal citation omitted).

[8] *Mid-South Drywall Co., Inc.*, 339 NLRB 480, 481 (2003) (finding that the Respondent violated Sec. 8(a)(1) when one of its agents, who was often the highest-ranking employee at the jobsites, told employees that, if it he owned the business, he would close it, while expressing opposition to the union); *Dlubak Corp.*, 307 NLRB 1138, 1145 (1992) ("Implicit, as well as explicit, threats of plant closure if employees vote for a union violate Section 8(a)(1)."), enfd. 5 F.3d 1488 (3d Cir. 1993).

[9] Sec. 8(a)(4) covers the conduct of an employee who appears at a Board hearing even though the employee did not testify. See *Belle Knitting Mills, Inc.*, 331 NLRB 80, 103 (2000).

[10] We affirm the judge's application of the missing witness rule to draw an adverse inference against the Respondent for its failure to call Teel and Allen as witnesses. Teel and Allen participated in discussions with Rich about the discharges at issue, and Teel initiated Price's discharge without a complaint from Schram.

[11] Contrary to the judge, in finding animus, Members Emanuel and Ring do not rely on the Respondent's threats to other employees after Price's discharge. In their view, this postdischarge conduct did not establish a causal relationship between Price's protected activity and his discharge, and there is sufficient predischarge conduct on which to rely.

[12] In addition to discharging Price the day after he attended the September 27 representation-case hearing, Members Emanuel and Ring find it compelling that the Respondent discharged Price, who "spearheaded" the organizing efforts, 3 weeks after the Union filed the petition, 5 weeks after the Respondent interrogated him and threatened facility closure, and 5 weeks before the election. See *Tschiggfrie Properties, Ltd.*, supra, slip op. at 4 (citing *Charter Communications, LLC*, 366 NLRB No. 46, slip op. at 7 (2018) (finding that an employer's discharge of an employee within 3 months of committing other violations against him because of union activity supported a finding that the discharge was also motivated by his union activity)).

[13] As stated in her concurring opinion in *Tschiggfrie Properties, Ltd*., supra, slip op. at 10, Chairman McFerran believes that the majority's "clarification" of *Wright Line* principles in that case was unnecessary as the "concepts [discussed by the majority there] are already embedded in the *Wright Line* framework and reflected in the Board's body of *Wright Line* cases." Ibid. Applying the Board's well-established *Wright Line* precedent here, Chairman McFerran agrees with the judge that the General Counsel met his initial burden of establishing that protected activity was a motivating factor for Price's discharge. In so finding, like her colleagues, she would rely on Schram's interrogation of Price as additional evidence of the Respondent's animus.

DHO hearing the Respondent pointed to in support of its decision to discharge either did not take place or the Respondent was not required to have any representatives attend; and (3) Price, who had no prior discipline, was treated more severely than numerous other employees with repeated attendance or misconduct infractions.

The Respondent asserts that it discharged Price for job abandonment, which its handbook defines as "failure to appear at work at the scheduled time and date." While the Respondent frames Price's conduct as worse than that of other employees, "the issue is not whether some conduct is 'worse,' in a moral sense, than other conduct," but whether the Respondent has shown that it would have discharged Price in the absence of his union and other protected activity (attending the representation-case hearing). *Septix Waste, Inc.*, 346 NLRB 494, 496–497 (2006) (holding that, in order to establish a valid *Wright Line* defense, an employer must establish that it has applied its disciplinary rules regarding the conduct at issue consistently and evenly). The Respondent has not met that burden. The Respondent provided no evidence that it has previously discharged employees for job abandonment. The record reveals that the Respondent issued employee MT a written warning for failing to show up, and suspended him for arriving late and leaving early after receiving six written warnings for a variety of infractions; employee JM received a written warning for failing to appear, with the written warning coming after he called out for scheduled shifts on multiple occasions; and employee SM received written warnings for failing to report or give notice on three occasions. Thus, it cannot be said, with any degree of reliability, that the Respondent *would* have discharged Price for a single "job abandonment" infraction absent his protected activity.

Moreover, even considering alternate grounds for Price's discharge—getting paid for hours not worked—we find that the Respondent failed to demonstrate that it would have discharged Price absent his protected activity. The record includes two instances of employees with disciplinary histories clocking in but not working during portions of their shift, and, presumably, as the record does not indicate otherwise, being paid for a full shift.[14] While not exact matches to Price's conduct, the abovementioned examples support the conclusion that the Respondent would not have discharged Price, who had never previously been disciplined, absent his union and other protected activity. Accordingly, we affirm the judge's finding that the Respondent's discharge of Price violated Section 8(a)(3), (4), and (1).

[14] Employee JK received a written warning for sleeping on the job a day after he was counseled for sleeping on three separate occasions. Employee JK's counseling and warning occurred *after* he had been disciplined for other infractions. Employee BS received a written warning for working on personal matters while on the clock after she had previously been disciplined for other infractions.

II. ERNIE AHMAD

The Respondent employed Ahmad from October 2016 to November 2017, as a part-time counselor aide. Ahmad, who also worked as a full-time (8 a.m. to 5 p.m.) support employment specialist for Saginaw County Mental Health Authority, where he served as union chapter president, requested assignment to the Respondent's night shift (midnight to 8 a.m.). The Respondent granted his request and, until mid-November 2017, Ahmad worked the night shift Friday to Sunday.

Ahmad joined the organizational efforts at the Respondent's facility. He discussed the Union with other employees and Schram, and he attended the Union's prepetition informational meetings.

Prior to November, the Respondent permitted employees to verbally request vacation leave. On or shortly before November 3, Schram told Ahmad that employees had to submit written vacation requests. On November 3, in accordance with Schram's directive, Ahmad submitted vacation requests for Saturday, November 11; Sunday, November 12; and Saturday, November 18.

Shortly before the November 7 election, Schram called Ahmad and employee Nash to his office and asked them how they were going to vote. Nash declined to answer. Ahmad stated that he supported the Union. Schram replied that they should vote against the Union because if the Union won, (1) the facility would probably close, (2) their wages would decrease as a result of union dues, and (3) he would have to be stricter on them as a boss and they would no longer be a team.

On November 5, 2 days before the election, Schram left a telephone message for Nash stating that he did not want her to go with the Union. Schram added that he did not want Ahmad to fill Nash with propaganda.

On November 7, the day the Union won the election, Schram denied Ahmad's November 18 vacation request. On November 8, he approved Ahmad's November 11 request and, on a date uncertain, he denied Ahmad's November 12 request.

About mid-November, Schram posted a new staff schedule, which stated that, starting December 3, all counselor aides would have at least 2 consecutive days off. Schram testified that the change was to benefit employees' mental health. The new schedule resulted in Ahmad having to work a 4 p.m. to midnight shift, which conflicted with his full-time job.

On Sunday, November 12, Ahmad called in sick and Schram said okay. Schram then telephoned his

supervisor, Kim Brown, a director based in Wilmington, North Carolina, and complained that he was upset because Ahmad, whose vacation request was denied, had called in sick. Brown suggested that Schram ask Ahmad for a doctor's note. That same day, Schram informed Ahmad by telephone that he needed to submit a doctor's note since he had previously been denied the day off. Ahmad's doctor's office was closed that day and the next. On Tuesday, November 14, Ahmad visited the doctor and obtained a note, which stated that Ahmad was sick and contagious on November 11 and directed the recipient of the note to contact the doctor if there were any questions. On November 15, without any explanation, Schram refused to accept the doctor's note from Ahmad.

Following his sick leave, Ahmad worked his next scheduled day, November 17. Before the start of his November 18 work shift, Ahmad telephoned Schram that he was having a family crisis and was unable to report for work. Schram said okay. Following their conversation, Schram sent a memo to Teel stating that Ahmad requested vacation leave, that the leave was not granted, and that Ahmad called in sick for one of the days and called in with a family emergency on the other. The memo noted that Ahmad was "creating a pattern" and recommended that he be terminated. Rich testified that Teel and Allen relayed this information to him, and he made the decision to terminate Ahmad. On November 21, Schram told Ahmad that he was terminated, effective immediately. The Respondent did not provide Ahmad with a termination letter.

Alleged Interrogation and Threats

The judge found that Schram violated Section 8(a)(1) by interrogating Ahmad and Nash about their union sympathies. We affirm the judge's finding.[15] Considering the *Rossmore House* factors, we find that the Respondent unlawfully interrogated Ahmad and Nash when Schram, the highest-ranking onsite manager, called them into his office shortly before the election and asked how they intended to vote,[16] in a conversation in which he committed other unfair labor practices (threats of negative reprisals). See *Bon Appetit Management Co.*, 334 NLRB 1042, 1050 (2001) ("How an employee will vote in a representation election is both sensitive and private, and lies at the core of Section 7 rights. When a supervisor asks an employee how she will vote, and threatens a reprisal in virtually the same breath, there can be no doubt that these statements interfere with, restrain, and coerce that employee in the exercise of protected rights."). The Board has consistently recognized that an employer's interrogation of employees concerning how they intend to vote, or have voted, in a secret-ballot election violates the Act, notwithstanding the employees' open advocacy for the union. See, e.g., *Spring Valley*, 265 NLRB 1410, 1413 (1982) (finding that an employer engaged in unlawful interrogation of an employee when it inquired into what had transpired at a union meeting the employee had attended the night before and asked how the employee was going to vote).

The judge also found that, during the same conversation with Ahmad and Nash, Schram violated Section 8(a)(1) by threatening them with facility closure, decreased wages as a result of union dues, and stricter enforcement of rules.[17] We find it unnecessary to pass on the judge's finding of these separate threat violations and, instead, find that the Respondent violated Section 8(a)(1) when Schram generally threatened Ahmad and Nash with adverse consequences if the union prevailed.[18]

Alleged Unlawful Discharge and Other Adverse Actions

We affirm the judge's finding that the Respondent violated Section 8(a)(3) and (1) when it changed Ahmad's schedule in mid-November, denied his vacation requests on November 7 and 8, required him to obtain a doctor's note on November 12, and discharged him on November 21.

Ahmad supported the Union and the Respondent knew as much, as Ahmad discussed it with Schram on multiple occasions. The Respondent exhibited express animus towards that activity in the form of Schram's voicemail to Nash, in which Schram stated that he did not want Ahmad to fill Nash with "propaganda," and we further infer animus from the proximity of each of the above adverse actions to the election and to Schram's 8(a)(1) violations against Ahmad and Nash. See *Willamette Industries, Inc.*, 341 NLRB 560, 562 (2004) (finding it significant that the employer announced a shift change shortly after an election, when the initial tally of ballots favored the union, and implemented the change after the hearing officer recommended certifying the union, and further finding that the timing of the shift change was motivated by the employer's hostility towards employees' union activity).

The Respondent failed to establish that it would have changed Ahmad's schedule, denied his leave requests,

[15] Although this issue was not alleged in the complaint, we agree with the judge that it is closely related to the subject matter of the complaint and was fully and fairly litigated. See *Pergament United Sales, Inc.*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990).

[16] The coercive nature of the interrogation was further demonstrated by Nash's reluctance to answer Schram's question. See *Kumho Tires Georgia*, 370 NLRB No. 32, slip op. at 5 (2020).

[17] In excepting to the judge's findings, the Respondent argues only that the judge erred on credibility grounds. As explained above, we find no basis for disturbing the judge's credibility resolutions.

[18] In Member Emanuel's view, stating that union dues would decrease employees' wages is not an unlawful threat.

required him to provide a doctor's note,[19] or, in reliance on Schram's recommendation,[20] discharged Ahmad in the absence of his union activity. Accordingly, we affirm the judge's findings on each of these violations.

AMENDED CONCLUSIONS OF LAW

Substitute the following for paragraph 5 of the judge's conclusions of law.

"5. By the following conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(1) of the Act:

a. Interrogated employees about their union activities or sympathies.

b. Threatened employees with adverse consequences if employees voted for the Union."

AMENDED REMEDY

Having found that the Respondent engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we amend the judge's remedy in the following respect.

We shall order the Respondent to file with the Regional Director for Region 7 copies of Greg Price's and Ernie Ahmad's corresponding W-2 forms reflecting the backpay award.

ORDER

The Respondent, Bannum Place of Saginaw, LLC, Saginaw, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees for engaging in union activity.

(b) Discharging or otherwise discriminating against employees for attending National Labor Relations Board hearings or otherwise participating in National Labor Relations Board proceedings.

(c) Interrogating employees about their union activities or sympathies.

(d) Threatening employees with adverse consequences because of their support for Local 406, International Brotherhood of Teamsters.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Greg Price and Ernie Ahmad full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Greg Price and Ernie Ahmad whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(c) Compensate Greg Price and Ernie Ahmad for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

(d) File with the Regional Director for Region 7 copies of Greg Price's and Ernie Ahmad's corresponding W-2 forms reflecting the backpay awards.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Greg Price and Ernie Ahmad, and within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its facility in Saginaw, Michigan, copies of the attached notice marked "Appendix."[21] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized

[19] Member Ring disavows the judge's statement that "[d]emanding that an employee with an unblemished attendance record get a note for being sick 1 day is not within reasonable norms, especially when [the sick day] was a Sunday," as it is not for the Board to require employers to conform to its views of "reasonable norms" in enforcing sick-leave rules. Moreover, in his view, an employer who believes an employee is lying may reasonably request a doctor's note, even if it was not the practice at the time. However, in light of the Respondent's claim that Ahmad had a pattern of calling in sick when no such pattern existed, Member Ring joins his colleagues in finding that the Respondent violated Sec. 8(a)(3) and (1) by requiring that Ahmad get a doctor's note.

[20] The judge found that "Schram played no role in the decisions to discharge Price or Ahmad." However, the record supports the conclusion that Ahmad's discharge was triggered by Schram's memo recommending discharge, and the Respondent's own brief acknowledges that "[t]he reason for [Ahmad's] termination is simple, Schram recommended it to corporate." Accordingly, we reject the contention that President Rich, who was rarely at the facility and never interacted with employees, made the decision on his own and find that the decision to discharge was based on Schram's recommendation.

[21] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted

representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If during the pendency of these proceedings, the Respondent has gone out of business or closed the Saginaw, Michigan facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at that facility at any time since August 21, 2017.

Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 30, 2021

Lauren McFerran, Chairman

William J. Emanuel, Member

John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against you because you engage in union activity.

WE WILL NOT discharge or otherwise discriminate against you because you attend National Labor Relations Board hearings or otherwise participate in National Labor Relations Board proceedings.

WE WILL NOT interrogate you about your union activities or sympathies.

WE WILL NOT threaten you with adverse consequences because of your support for the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Greg Price and Ernie Ahmad full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Greg Price and Ernie Ahmad whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest, and WE WILL also make them whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Greg Price and Ernie Ahmad for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating backpay awards to the appropriate calendar years for each employee.

WE WILL file with the Regional Director for Region 7 copies of Greg Price's and Ernie Ahmad's corresponding W-2 forms reflecting the backpay awards.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Greg Price and Ernie Ahmad, and WE WILL , within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

BANNUM PLACE OF SAGINAW

within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The Board's decision can be found at www.nlrb.gov/case/07-CA-207685 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Donna Nixon, Esq., for the General Counsel.
Clifford L. Hammond and *Robert A. Hamor, Esqs. (Foster Swift Collins & Smith, PC),* for the Respondent.
Michael L. Fayette, Esq. (Pinsky, Smith, Fayette & Kennedy, LLP), for Charging Party Teamsters.

DECISION

STATEMENT OF THE CASE

IRA SANDRON**,** Administrative Law Judge. This matter is before me on a consolidated complaint and notice of hearing (the complaint) issued on October 20, 2019, arising from unfair labor practice charges that Local 406, International Brotherhood of Teamsters (IBT) (the Union) and Ernie Ahmad (Ahmad), an individual, filed against Bannum Place of Saginaw, LLC (the Respondent or the Company), concerning conduct at the Respondent's Saginaw, Michigan facility (the facility) occurring before and after the Union's certification on November 15, 2017.[1]

Pursuant to notice, I conducted a trial in Detroit, Michigan, on February 24–26, and by telephone on March 4, 2020, at which I afforded the parties a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence.

At trial, I granted the General Counsel's motion to withdraw paragraphs 17, 18, and 20 of the complaint, which related to employee Melanie Turner (Turner), because the General Counsel and the Respondent entered into an informal settlement agreement resolving them. I also granted the General Counsel's later motion to withdraw paragraphs 10(d) and (l) of the complaint. I further grant the General Counsel's motion to withdraw paragraphs 10(e), (j), and (k) (GC Br. at 1 fn. 3).

The Respondent filed a pretrial motion to dismiss on January 27, 2020, arguing that the complaint should be dismissed because the Board lacks jurisdiction inasmuch as the Respondent is a joint employer with the United States Department of Justice, Bureau of Prisons (BOP).

On the first day of hearing, I explained my reasons for denying the motion, and I will not repeat them in detail. To summarize, the Respondent's joint-employer argument was considered and rejected in Case 07–RC–205632, and the Union was certified as the collective-bargaining representative of the petitioned-for unit on November 15, 2017. I stated that the Respondent would be allowed to present evidence of (1) any changed facts since October 3, 2017, when the representation case (R case) hearing concluded; (2) any changes in the law since October 31, 2017, when the Regional Director issued a Decision and Direction of Election; and (3) any other evidence for which it could show good cause why it was not presented at the R case hearing. The Respondent did not present any such evidence, and I adhere to my earlier order denying the motion.

Issues

(1) Did the Respondent, through Facility Director Kenneth Schram (Schram), violate Section 8(a)(1) by the following:

(a) On August 21, 2017, interrogated an employee about his union membership, activities, and sympathies and the union membership, activities, and sympathies of other employees?

(b) On August 21, threatened an employee that the Respondent would shut down operations at the facility and open a new facility in a different geographical location if employees selected the Union as their bargaining representative?

(c) In August, told an employee that he would be able to run his business how he saw fit even if employees selected the Union to be their bargaining representative, and that it would be futile for employees to select the Union as their bargaining representative?

(d) About September 20, told employees that they were supposed to communicate with him and tell him what was going on regarding the union organizing campaign?

(e) In late October or early November, threatened employees that the Respondent would shut down the facility if the employees selected the Union as their bargaining representative?

(f) In late October or early November, threatened employees that he would have to act like a boss and strictly enforce policies and/or rules if the employees selected the Union as their bargaining representative?

(g) On November 5, told an employee that a certain employee was strongly opinionated and that he did not want that particular employee to fill her head with (union) propaganda?

(1) Did the Respondent violate Section 8(a)(1) by paying employees to attend union organizational meetings during work times from June 19 until August 31?[2]

(2) Did the Respondent violate Section 8(a)(3), (4), and (1) by discharging case manager Greg Price (Price) on September 28 because he engaged in protected union activity and because he attended the R case hearing in Case 07–RC–205632 on

[1] All dates hereinafter occurred in 2017 unless otherwise indicated.

[2] The complaint alleged this also violated Sec. 8(a)(3), but the General Counsel has moved to amend out the 8(a)(3) allegation (GC Br. at 29).

September 27?[3]

(4) Did the Respondent violate Section 8(a)(3) and (1) by taking the following actions against part-time counselor aide (CA) Ernest Ahmad (Ahmad) because he engaged in protected union activity:

(a) About November 7 and 8, denied his vacation requests for November 12 and 18;

(b) On November 12, required him to submit a doctor's note when requesting sick leave;

(c) About mid-November, scheduled him to work on the second shift; and

(d) On November 21, discharged him?

(5) Did the Respondent's conduct described in paragraph 4(a) and (b) violate Section 8(a)(5)
and (1) because they constituted unilateral changes in terms and conditions of employment
made without first affording the Union prior notice and a meaningful opportunity to bargain
over the decision and its effects?

(6) Did the Respondent also violate Section 8(a)(5) and (1) by changing its vacation request policy, in about November, to require that employees complete vacation forms when requesting vacation days, without affording the Union prior notice and a meaningful opportunity to bargain over the decision and its effects?[4]

Witnesses and Credibility

The General Counsel called Price; Ahmad; Marian Novak (Novak), union organizer for Teamsters Joint Council 43; former part-time CA Sharda Nash (Nash); and, as a rebuttal witness, Matthew Call (Call), oversight specialist for the BOP. The Respondent called Schram and John Rich (Rich), the president and corporate counsel of Bannum, Incorporated, the Respondent's parent company.

Because credibility resolution is key to deciding the issues in this case, I will set out how I have arrived at my conclusions.

Novak testified about Price's role in union organizing at the facility. Her testimony was corroborated by Price, Ahmad, and Nash.

Nash's testimony was appropriately detailed and consistent with that of other witnesses of the General Counsel and with General Counsel's Exhibit 8, the transcript of Schram's November 5 voice mail message to her. Although the Respondent characterizes Nash as a "disgruntled" former employee (R. Br. 18), the mere fact that she quit is insufficient to draw such a conclusion or to show bias against the Company, and nothing in her testimony demonstrated that she was skewing her testimony because of hostility to Schram.

Price testified in a straightforward and confident manner, and his testimony was quite detailed and substantially consistent on direct and cross-examination. Any uncertainties and imprecisions in his testimony were within reasonable bounds and did not undermine his overall credibility.

Ahmad was at times vague in testifying about particular incidents and was clearly reluctant to explain the personal reasons behind his leave requests. Nevertheless, he made no apparent efforts to overstate the facts in his favor, other witnesses corroborated him, and he appeared generally sincere.

Call was a third-party witness with no stake in the proceeding, and he showed no apparent attempts to slant his testimony against Schram or the Respondent in general. Moreover, Schram was not a fully credible witness. Accordingly, I credit Call's testimony regarding his conversation with Schram about the Union on about September 20. In this regard, the Respondent chose not to take the opportunity that I offered to recall Schram to rebut Call's testimony. I also credit Call's testimony that the Department of Labor wage determinations referenced in the BOP contract represented a floor or the minimum benefits that the Respondent had to pay employees and did not prevent the Respondent from paying them more; I find that he was a more reliable witness than Rich, who testified to the contrary.[5]

Rich was not a credible witness. His testimony was markedly evasive, nonresponsive, and generalized. Although he testified that he decides all terminations, he vacillated on whether Manager Katrine Teel (Teel), Schram's supervisor, brings all disciplinary matters to his attention and the role she plays in deciding disciplines, and he equivocated on his knowledge of the disciplinary policies in effect at the facility. Moreover, I find incredible his testimony that he could not say whether Teel, who attended the R case hearing, informed him that Price was also there because "I didn't pay attention to who else was at the hearing, other than Katrina Teel."[226] Rich testified that employees at the facility who call in sick for 1 day (even on a Sunday) are required to obtain a doctor's note that they were ill. This assertion was contradicted by Schram, is not contained in any written policies of the Respondent or any other evidence of record, and on its face flies in the face of reason. I find ridiculous his further testimony that Ahmad should have gone to a clinic on Sunday, November 12, when his doctor's office was closed, to obtain documentation of his illness.

Schram was an unreliable witness on pivotal matters for the following reasons. He was quite often vague and/or equivocal, especially in testifying about his conversations with Price about the Union and Price's attendance at union meetings and the R case hearing, and about attendance and leave policies and practices at the facility. He often answered in summary fashion rather than providing specific details on his conversations with Price, and in general. General Counsel's Exhibit 8 directly contradicted his testimony that he did not tell employees that Ahmad

[3] The Respondent uses the nomenclature "termination" for discharges for cause. Consistent with the parties' briefs, I will use "discharge" unless "termination" was used in testimony or in the Respondent's documents.

[4] The complaint inadvertently omitted to allege this conduct as a unilateral change in paragraphs 23 and 24, but the wording of the allegation connotes a unilateral change, and the matter was fully litigated.

[5] In support of its joint employer argument, the Respondent points out (R. Br. at 38) Call's testimony on cross-examination that he reviews personnel matters and compliance issues of every aspect of the Respondent's operation. This very conclusionary statement did not fit within any of the three criteria that I set out for receiving additional evidence on the issue.

[6] Tr. 398.

was filling their heads with union propaganda. Schram directly contradicted himself on whether Teel told him after she left the R case hearing that Price had been there, changing his testimony on direct examination that she did not mention Price to testifying on cross-examination that she did. His testimony that he was unaware that Price was going to attend the R case hearing on September 27 and did not approve Price's going there on the clock was unbelievable in light of the fact that he admittedly was informed that morning that Price had punched in much earlier than his scheduled shift and written "Court versus Bannum" in the logbook.

Nor do I find credible Schram's testimony that he concluded that Ahmad had a "pattern" of calling off from work for days for which he had been denied vacation leave (November 12 and 18). Schram testified that this "pattern" was the reason that he asked Ahmad on November 12 for a doctor's note for calling in sick that day. Thus, Ahmad's November 18 call in for a "family emergency had not yet occurred, and Schram could not have considered it in reaching his conclusion. A "pattern" of one occurrence is an oxymoron. Significantly, Ahmad had an otherwise perfect record in his year-plus employment. Finally, when Schram was asked why he changed the scheduling policy in about mid-November, adversely affecting Ahmad, he responded that he firmly believed that it would benefit the staff's mental health. Schram had been at the facility since April and offered no explanation for why he waited until shortly after the Union was certified to institute the change—to Ahmad's detriment—or the bases on which he concluded that employees' mental health would benefit.

The "missing witness" rule allows a judge to draw an adverse inference against a party that fails to call a witness who is under the control of that party and is reasonably expected to be favorably disposed towards it. *Natural Life, Inc. d/b/a Heart & Weight Institute,* 366 NLRB No. 53, slip op. at 1 fn. 1, citing *Electrical Workers IBEW Local 3 (Teknion, Inc.),* 329 NLRB 337, 337 fn. 1 (1999); *Reno Hilton,* 326 NLRB 1421, 1421 fn. 1 (1998), enfd. 196 F.3d 1275 (D.C. Cir. 1999).

As counsel for the Respondent represented, and Rich's and Schram's testimony confirmed, Schram played no role in the decisions to discharge Price or Ahmad; rather, Rich was the decision-maker, and he had no discussions with Schram regarding the underlying events. Instead, Rich relied solely on the information that Teel provided to him. Significantly, Schram testified that he always brought employee behavioral issues to Teel's attention and that she made the decisions as to discipline and told him the language to use in the disciplinary write-ups. Moreover, in other situations, Schram has made recommendations to Teel to discharge employees, but he did not do so with respect to Price; instead, Teel sua sponte initiated Price's discharge without any complaints from Schram. She thus would have been in the best position to explain what triggered her investigation of Price's activities on the day of the R case hearing, and to explain the Respondent's disciplinary policies in general. In sum, Teel was the critical link in the management hierarchy with respect to the two discharges at issue, and I draw an adverse inference from the Respondent's failure to call her.[7] The same holds true for the absence of testimony from Sandra Allen (Allen), vice president of operations, who Rich testified was involved in discussions related to Price's discharge.

Finally, I do not believe that the General Counsel's witnesses collectively fabricated their accounts of Schram's statements and actions in connection with employees and the Union. I will not speculate on why Schram exhibited contradictory behavior toward prounion employees, as the Facts section will show.

In sum, for the above reasons, I credit the General Counsel's witnesses where their testimony diverged from that of Schram and Rich.

Facts

Based on the entire record, including testimony and my observations of witness demeanor, documents, written and oral stipulations, and the thoughtful posttrial briefs that the General Counsel and the Respondent filed, I find the following.

The Respondent's Operation

The Respondent, a limited liability company with an office and place of business in Saginaw, Michigan, is engaged in providing residential reentry services for Federal inmates under a contract with the BOP. The Respondent has admitted Board jurisdiction as alleged in the complaint, and I so find.

Bannum, Incorporated, the Respondent's parent company, operates three other facilities in other states. Rich has authority over all of them, and Allen reports directly to him. Their offices are in Florida. Teel, whose office is in South Carolina, oversees the four facility managers, who are the only onsite supervisors. Schram was the facility director at the facility from April 2017 to December 2019, when he voluntarily resigned.

The Respondent's contract with the BOP includes a statement of work (SOW) (R. Exh. 3) that sets out staffing and other personnel requirements that the Respondent must follow.

Union Organizing at the Facility

By all accounts, including Schram's, Price spearheaded union organizing efforts at the facility and informed Schram of his union sympathies and activities.

Thus, prior to June, Price initiated a conversation with Schram in the latter's office. Price asked Schram about seeing if the staff could get a pay raise. Schram responded that the Company would not give one. Price then said, "Well, what about forming a union?" Schram replied, "[D]o what you have to do."[8]

Thereafter, Price talked with other employees, including Ahmad, Nash, and Turner, and determined that there was support for a union. He then contacted the Union in June and arranged for a meeting on June 19 at 3 p.m. at the union office in Zilwaukee (about a 15-minute drive from the facility).

On June 18, Price advised Schram that he and Turner planned to go to the June 19 meeting. Schram replied that he was for it because, if the employees got a pay raise, he in turn would ask

[7] Teel was engaged in a BOP audit of the Company in South Carolina the week of the trial, and the Respondent had made a request for a postponement on that basis, which Deputy Chief Judge Amchan denied. However, the Respondent's counsel declined my offer to accommodate her schedule to allow her to testify, stating that he did not need to call her as a witness.

[8] Tr. 87.

for one. He stated that they could leave on the clock at 2:30 p.m. and come back afterward, and he would just call in their lunch hour (lunch was at no fixed time). Price mentioned that Ahmad, who was not working that day, would be meeting him and Turner at the meeting.[9] On June 19, Price left work at 2:30 p.m., attended the meeting, and returned to the facility at 4:15 p.m. Upon arriving back, Price went into Schram's office and told him about the meeting and the better wages, benefits, and working conditions that the employees sought to obtain from the Union. Price's timecard report does not show any punching out that day, and he was paid for all of his hours on the clock (R. Exh. 4 at 3; GC Exh. 13).

Novak held three meetings with the Respondent's employees, on August 7, 21, and 31, at the Union's office.[10] Approximately 4–10 employees, including Price, attended each of them. All lasted for an hour or two.

Both Price and Ahmad testified about an incident when they and Turner stayed in the conference room after a staff meeting, to discuss union organizing efforts (Ahmad was not scheduled to work that day but came in for the meeting). Their accounts were not inconsistent other than for the date. I credit Price's more detailed account, and, based on the substance of what was said, his testimony that it was prior to the August 7 meeting, as opposed to Ahmad's September or October timeframe. As Price, Ahmad, and Turner were discussing the upcoming August 7 union meeting, Schram came over. He stated that he supported their efforts and that he would allow Price and Turner to attend union meetings on the clock.

On August 7, Price came in at noon and reminded Schram that he and Turner had to attend the union meeting that day. Price's testimony that he and Turner punched out at 1:45 p.m. and returned at 4 p.m. is not supported by their timecard records (R. Exh. 4 at 5, R. Exh. 9 at 2; see also R. Exh. 11, facility log for that day). Rather, the timecard records show that both clocked in in the morning, clocked out at 4:13 p.m., and were back at 5 or 5:13 p.m.

I find it more likely that they attended the meeting on the clock. I base this on Price's other testimony, Schram's equivocal testimony, and Ahmad's and Novak's corroborating testimony. In this regard, Novak testified that both Price and Turner told her that their manager allowed them to attend the union meetings on the clock. The Respondent's counsel objected on the grounds of hearsay, but the Board does "not invoke a technical rule of exclusion of hearsay evidence but rather allows hearsay if it is 'rationally probative in force and if corroborated by something more than the slightest amount of other evidence.'" *Midland Hilton & Towers*, 324 NLRB 1141, 1141 fn. 1 (1997), enf. denied on other grounds, 598 F.2d 1267 (2d Cir. 1979), citing *Alvin J. Bart & Co.*, 236 NLRB 242, 242 (1978).

In any event, the timecard records are not necessarily inconsistent with their having attended a 2 p.m. union meeting on the clock, and Price was paid for the entire day (GC Exh. 13). At this meeting, Price and Turner submitted signed authorization cards to the Union.

Price and Turner attended the August 21 meeting. Price told Schram of the meeting the day before but could not recall specifics other than telling him that they had to leave at 1:45 p.m. On August 21, Schram called them into the conference room and stated that he had just hired another prounion employee, who wanted to become part of the committee. He told Price and Turner to come right back after the meeting was over. They returned at 4 p.m. Price did not testify about whether they punched out for this meeting; their timecard reports show that they both clocked in in the morning and clocked out at 3:48 p.m. (R. Exh. 4 at 5, R. Exh. 9 at 2). Although Price's testimony (and the statement in his affidavit) that they returned from the meeting at 4 p.m. may have been in error, their timecard records are not necessarily inconsistent with their having attended the 2 p.m. meeting on the clock.

When Price returned from the August 21 meeting, Schram asked what was discussed, and Price substantially repeated what he had told Schram after the June 19 meeting. Schram shook his head and said that the employees were asking way too much; Rich would not approve any of it; and Rich would just shut the place down, and he (Schram) would do the same. Schram then solicited Price's suggestions on how to deal with a problem employee.

I note that Schram's timecard report (R. Exh. 10 at 3) and the log for August 21 (R. Exh. 5) show that Schram left at 2:23 p.m. on August 21. However, on cross-examination, Schram conceded that it was possible that he could have stayed past that time if something came up. Inasmuch as he was the sole supervisor at the facility, that would not seem surprising. Even assuming that Price was mistaken on the date, and the conversation was on August 7 or August 31 rather than August 21, I am satisfied that such a conversation took place and that Price's recollection of its contents was reliable. I note that other witnesses attributed similar statements to Schram about what Rich would do were the Union to be voted in.

Price attended the August 31 meeting but was not scheduled to work that day and did not discuss it with Schram. They did have another conversation at some point in August, in Schram's office. Schram stated that he wanted to work with Price if the Union passed because he did not want Price to file grievances against him for covering shifts for CAs instead of giving them more hours. He further stated that he believed he still had the right to run the day-to-day operations as he saw fit.

R Case Proceedings

On September 5, the Union filed a petition in Case 07–RC–205632 (the petition) (GC Exh. 4) to represent all regular full-time and part-time social service coordinators, case managers, and CAs (the unit).

The R case hearing was originally scheduled for September 21 but was postponed to September 22 and finally to September 27 (GC Exh. 5). The day before either September 21 or 22, Price told Schram that Business Agent Grant Hemenway (Hemenway)

[9] Whether Ahmad actually attended the June 19 meeting is unclear because he did not mention it in his testimony. He testified that he did not attend union meetings on the days that he worked at his full-time job.

[10] Novak, who handles organizing throughout Michigan, testified that the first meeting was held on August 1, but I believe that Price would have had a better recollection of the date and credit him that it was August 7.

wanted to meet him at 6 a.m. the next day and go together to the hearing, because Price was a potential witness for the Union. On September 26, Price went to Schram and said that he would be attending the hearing. Schram did not respond. I will later describe the events of September 27.

Following the R case hearing on September 27 and October 3, the Regional Director issued a decision and direction of election on October 31 (GC Exhs. 5, 6). On November 15, following an election on November 7, the Union was certified as the exclusive bargaining representative of the unit (GC Exh. 7).

Alleged 8(a)(1) Postelection Violations

In late October, Ahmad had a conversation with Schram in the latter's office. Schram asked if he could talk to him because the petition had been filed. Schram told him that if the employees formed a union, the facility would be shut down. Ahmad could not recall how he responded.

In late October or early November, Schram called Ahmad and Nash into his office during the midnight or third shift. Ahmad's and Nash's accounts of what he said were very similar, with no inconsistencies. I credit Nash's more detailed version. Schram asked them how they were going to vote in the election. He said that they should vote against because if the Union got in, (1) the facility probably would be closed down; (2) their wages probably would drop because they would have to pay union dues; and (3) he would have to be stricter on them as a boss. Nash did not say how she was going to vote but said that it was not up to Schram to know. She recalled Ahmad stating something to the effect that he was for the Union.

Schram called Nash on November 5 and left a message on her cell phone (see GC Exh. 8, a transcript of the call). During the call, he stated that he did not want her to go with the Union, did not want Ahmad to fill her with propaganda, and wanted to help the employees and could do so as a boss.

Employee Handbook Provisions

The following provisions in the employee handbook (Jt. Exh. 1) are relevant to Price's and Ahmad's discharges:

> Progressive discipline (at 75)—provides for four steps: verbal warning, written warning, suspension with or without pay, and termination. Depending on the severity of the problem and the number of occurrences, one or more steps may be bypassed.

Employee conduct and work rules (at 63)—unacceptable conduct that may result in disciplinary action includes excessive absenteeism or any absence without notice and unauthorized absence from the workstation during the workday.

Employment termination (at 40)—one of the circumstances for termination is job abandonment–failure to appear at work at the scheduled time and date.

Attendance (at 68)—"[A] poor attendance record or excessive lateness may lead to disciplinary action up to and including termination of employment."

Price's Employment and Discharge

Price was employed as a full-time case manager from January 27–September 28, 2017, when he was discharged. He worked a set schedule: Sunday through Tuesday, noon to 9 p.m. (second shift); and Wednesday and Friday, 9 a.m. to 6 p.m. (first shift). One of his duties was conducting home confinement checks on homes where inmates had been or were going to be released. Security service coordinators such as Turner also performed such checks. Price testified that prior to his discharge, he received one written warning, in March 2017 from an acting facility director before Schram arrived, but it is not contained in the Respondent's records.

On about September 20, Schram gave Price a copy of the Respondent's contract with the BOP, which Price had requested to provide to the Union. Call of the BOP was at the facility that day, conducting monitoring. He had a conversation with Schram in the latter's office in the midday. Schram stated that "they" were not going to negotiate with the Union, whether the Union passed or not. Call asked who the "they" were, and Schram replied Rich. Schram further said that if the Union passed, the Company was not going to bid on the upcoming contract and would cease doing business in the area. There is no evidence that Price or any other employee overheard these statements.

At around this date, Schram called Price to his office and provided him with financial records (company revenues from 2007–2017) that Price had requested to provide to the Union.[11]

The sole reason that the Respondent has advanced for Price's discharge was his alleged job abandonment on September 27, the day he attended the R case hearing.

Events of September 27

Price was scheduled to work from noon to 9 p.m. on September 27 (see GC Exh. 2 at Bannum 827). He clocked in at 5:31 a.m. that day (R. Exh. 4 at 6) and wrote in the logbook, "Court versus Bannum." Schram testified that when he came to work that morning at approximately 7:45–8, a midnight shift employee showed him that Price had signed in at 5:31 a.m. and written the above notation. Schramm did not explicitly approve this, but Price testified that he clocked in and then left for the meeting because Schram had previously given him permission to go to union meetings on the clock.

After leaving the facility, Price went to the Union's office and drove with Hemenway to the Detroit Regional Office, about 1-1/2 hours' drive from Saginaw. Teel was the sole witness to testify at the R case hearing, which concluded at 11:03 a.m. Thereafter, Hemenway and Price returned to Saginaw, where they had lunch and talked. Price returned to the facility at 2:38 p.m. (ibid). He made eye contact with Schram, but they said nothing to one another. Price punched out because he already had 9 hours in (1 hour of overtime), and the Company was cutting down on overtime. Schram said nothing to him about his activities that day, and Schram made no recommendations that he be disciplined for them.

A DHO hearing was scheduled at the Bay County Jail that day to determine if an inmate should be removed from the program because of violation of the rules. There was no fixed time, but it was to be before 3 p.m. I credit Price that he advised Schram of the R case hearing the previous day and that he could not

[11] Although the testimony of Call and Price might be deemed to reflect inconsistent conduct on Schram's part, I have no reason to doubt their respective accounts and will not surmise what Schram's motivations were.

accompany Schram to the jail because I do not believe that Price would have failed to show up for the assignment had he not been given prior permission to be excused. In this regard, when Price returned to the facility in the afternoon on September 27, Schram said nothing to him about that hearing. No one from the facility went to the jail that day because Schram had no one available to go. Schram testified that he did not know whether the hearing was ever rescheduled.

Schram contradicted himself on whether Teel mentioned Price when she called him after the R case hearing was over and stated that she was waiting at the airport for her flight back to South Carolina; testifying "no" on direct examination, and "yes" on cross-examination. In any event, in the afternoon, after arriving back in South Carolina, Teel again called Schram. Schram testified that he could not remember the whole conversation but that Teel asked either whether Price was at the facility (direct examination) or what Price's schedule was for the day (cross-examination). She did not tell Schram why she wanted this information. He told her about Price's early punch in and "Court against Bannum" notation in the logbook, and his coming back, signing out, and leaving. Teel stated that she would have to make a call.

Price's Discharge

Rich, who made the decision to discharge Price, testified that Teel informed him on September 27 that Price had been at the hearing prior to the time that his shift was to start, failed to show up for his shift and did not work at all that day, arrived back at approximately 2:30 p.m., and punched out and left. Rich further testified that he also had a discussion with Teel and Allen and found out that there was the DHO hearing that day and that Schram had to find someone else to cover it. Rich testified that Price's conduct was severe enough to warrant termination, especially since Price, as a case manager, was designated as key staff in the SOW (R. Exh. 3 at 11). Rich never spoke with either Schram or Price. His equivocation about whether Teel told him that Price was at the R case hearing was not believable.

On September 28 at 8:15 a.m., Schram called Price on his cell phone, which automatically recorded their conversation (see GC Exh. 10, the transcription). Schram stated that Teel had called him the previous evening, and "[t]hey are terminating your employment for abandoning work yesterday, not working 9–12." Price responded that was not true because Schram knew he had the appointment in Bannum (the R case hearing). Schram repeated what "they" said about Price's conduct on September 27. Price asked why Schram had not called him as he usually did for everybody else.[12] Price became irate, and Schram did not respond to the question but ended by saying that Price would be mailed his final check. Price received nothing in writing concerning his discharge.

Ahmad's Employment and Discharge

Ahmad was employed as a part-time CA from October 20, 2016–November 2017, when he was discharged. At the time of his hire, and at all times during his employment, he worked full-time, 8 a.m.–5 p.m., at the Saginaw County Mental Health as a salaried support employment specialist. I credit his unrebutted testimony of what was said at his interview. Thus, he informed the interviewer (an acting director, whose name is not in the record) of his daytime job and that he could therefore only work the night shift (midnight to 8 a.m.). When he filled out the employment application (R. Exh. 8), he checked that he was available to work full-time because she told him that would assure his getting hired.

I further credit Ahmad's unrebutted testimony of his conversation with Schram in Schram's office in April, a couple of weeks after Schram came to the facility, as follows. Schram asked if he had another job, and Ahmad replied that he worked at the mental health facility. Schram asked what he did, and Ahmad told him. Schram asked if there was a union, and Ahmad said yes. Schram then asked if Ahmad was involved in the union, and Ahmad replied that he was the union's chapter president. Schram asked his duties, and Ahmad told him.

Until about mid-November, Ahmad's schedule was working three consecutive night shifts Friday through Sunday (see GC Exh. 2), although he occasionally switched with other employees and worked a night shift on a different day. He usually worked with Nash or another CA. Prior to his termination, he had no disciplines or attendance violations.

Change in Ahmad's Schedule

By SOW rules, two staff have to be on duty, one male and one female. Schram posted schedules at least 2 to almost 4 weeks in advance. In approximately mid-November, Schram posted a new staff schedule, stating that starting December 3, all CAs would have at least 2 consecutive days off (GC Exh. 14). Schram offered no cogent explanation for the need or timing of this change, vaguely alluding to employees' mental health. He conceded that the Union was never notified beforehand.

Ahmad testified that he saw a posted schedule showing that he would work two third shifts and one second shift (4 p.m. to 12 a.m.) the week of December 3 (GC Exh. 15).[13] After seeing General Counsel's Exhibits 14 and 15, Ahmad went to see Schram. He asked why Schram was changing his schedule to a second shift when Schram knew that he could not work it and was hired for third shift. Schram responded, "Oh, well."[14] Ahmad mentioned that he had spoken to CA Ramesse Amegah (Amegah), who could switch with him and work a second shift.

Use of Vacation Request Forms

Prior to November 2017, Ahmad would tell Schram verbally if he needed a day off, and he was unaware of any written vacation request form. CA Nash was employed from January 2017 to February 2018, when she quit. Prior to the election, she told Schram verbally if she needed a day off. After the election, and she learned that Ahmad had a request denied, she submitted a note on about December 16 and left it at Schram's door (GC Exh. 9). Therein, she confirmed her oral request of November 16 to

[12] General Counsel's Exhibit 3, which I will later discuss, reflects that Schram called employees who did not report to work for their scheduled shifts.

[13] The dates for the week are handwritten. Ahmad testified that he was not the one who handwrote them in, and Schram did not address the document.

[14] Tr. 279.

have off January 7, 2018, and asked for days off on February 10 and 11, 2018. Schram accepted it. Schram testified that although employees were supposed to submit vacation requests on the vacation request form, he did accept handwritten notes and sometimes took the request verbally.

On or shortly before November 3, Schram told Ahmad that employees now had to submit written requests to take time off. Ahmad asked where the form was, and Schram directed him to a cabinet in the conference room. Schram offered no testimony on their conversation, and I credit Ahmad's unrebutted account.

General Counsel's Exhibit 12 represents all written vacation requests submitted for calendar years 2017 and 2018; leaving aside Ahmad, there are two; one from April 2017, the other from January 2018. Respondent's Exhibit 6 additionally contains 17 vacation request forms, from April 2015–December 2016.

Ahmad's Vacation Requests and Denials

Employees are not paid during the year for time not actually worked; instead, they accrue paid vacation time during the year for which they receive a lump sum payment the first full period following the end of the calendar year.

Nash was never denied a vacation request. Prior to the election, she tried to find someone to take her scheduled shift; if she could not, she so informed Schram verbally. When Schram could not get someone to cover for her absence, he worked with her. All of the vacation requests contained in General Counsel's Exhibit 12 and Respondent's Exhibit 6 were approved, with the exception of Ahmad's November 12 and 18 requests.

On November 3, Ahmad submitted a form requesting Saturday, November 11, and Sunday, November 12 (GC Exh. 16; also, GC Exh. 12 at 2). His request for November 11 was approved on November 8, with the notation that Ahmad switched with Amegah; however, the request for November 12 was denied on a date uncertain, with the notation that Amegah and (Bill) Watkins (Watkins) were unavailable. Also, on November 3, Ahmad submitted a vacation request form for November 18 (GC Exh. 12 at 3), which Schram denied on November 7, with the notation that Amegah and Watkins were unable to cover the shift.

The Respondent does not provide paid sick leave to employees. On November 12, Ahmad called in before his shift started and told Schram that he was not coming in because he was sick. Schram said okay. Later, at about 6 p.m., Schram called him and said that he needed to bring in a doctor's slip for November 12 because he had earlier been denied the day off.

Ahmad's doctor's office was closed Sunday, November 12 and on Monday, November 13 (Veterans' Day), so he went there on November 14 and obtained a note from NP Janet Ader of Central Michigan University Health (GC Exh. 17). It stated that Ahmad was seen on November 14; that he had an illness on November 11 and had been contagious; and to contact her with any questions (GC Exh. 17).

On November 15, Ahmad, who was not working, came in and provided Schram with the above note. Schram said that he would not accept it but gave no reason. Ahmad asked why he had asked Ahmad to go to the doctor's office if he was not going to accept it. Ahmad could not recall if Schram responded.

Ahmad worked his next scheduled day, November 17. On November 18, shortly before his shift was to start, Ahmad called Schram and said that he was having a family crisis and would not be able to come in. Schram said okay. Ahmad testified that the crisis involved his son going out of control and "tearing up the house and everything."[15]

Ahmad's Discharge

On November 21, Schram left a phone message to call him, and Ahmad returned his phone call the same day. Schram told him that he was terminated, effective immediately. Ahmad never received a termination letter.

Schram filled in for Ahmad on November 12. He testified that he was upset about having to do this and discussed what had occurred with the facility director in Wilmington, North Carolina, who responded that Schram could request that Ahmad provide a doctor's note. However, Schram testified on cross-examination that he asked for the note because Ahmad "created a pattern of calling off when requests were denied."[16] I credit Nash's testimony that Schram would work with her if he could not get someone else to be the second person on her night shift. Furthermore, on cross-examination, Schram testified that if an employee called in sick, Schram had to find someone else to fill the shift or work it himself and that the employee would not be required to bring in a note (contrary to Rich).

Schram testified that he found the note unsatisfactory because Ahmed did not go to the doctor until after November 12. Schram's testimony that Ahmad responded that he was not wasting his time at the doctor's and paying money was not credible inasmuch as November 12 was a Sunday, and Ahmad did go to the medical office to get a note at the first opportunity.

Schram further testified that when Ahmad called out on November 18 for a family emergency, he drew up a memo requesting that Ahmad be terminated (GC Exh. 20). Schram referenced Ahmad's calling out sick on November 11[sic] and calling out for the family emergency on November 18, after having been denied vacation leave for those days. He concluded by asking that Ahmad be terminated "as this is becoming a pattern and it is directly affecting the moral[sic] of the staff in the building."

Rich testified that Teel and Allen (neither of whom testified) communicated to him what had occurred and that he made the decision to terminate Ahmad because he called in sick on two of the days for which he had been denied vacation leave and that this was "an integrity issue."[17]

Other Disciplines

General Counsel's Exhibit 3 contains all (26) written attendance disciplines for calendar years 2017 and 2018 (including one from 2019). They include nonattendance misconduct. I will summarize them by employee, starting with those with the most attendance violations. All were written warnings and occurred

[15] Tr. 295.

[16] Tr. 552. This was based solely on Ahmad's calling in sick on November 12 and, as I previously stated, a "pattern" based on a single occurrence is oxymoronic.

[17] This was inaccurate. Ahmad called in sick on only 1 of the 2 days; the other was for a family emergency.

in 2017 unless otherwise stated. I will use initials in lieu of employees' names in the interest of protecting their privacy.

MT:

Insubordination (February 9).
Improper notification for calling out for shift (June 30).
Arrived 40 minutes late without calling (August 30).
Arrived to work 22 minutes late (September 13).
Did not come into work and claimed unaware that she was scheduled when Schram called her (September 18).
Arrived 22 minutes late (September 27).
Suspended for arriving 22 minutes late and clocking out early without notifying Schram (September 30).
Insubordination when presented write-up for being late (October 2).

General Counsel's Exhibit 6, Schram's recommendation that MT be terminated, states that she also arrived late eight times between June 6–September 26, between 7 minutes and 52 minutes, and that when informed on October 3 of her suspension, she walked out and stated, "Fuck this shit."

I note that despite Rich's testimony that he is the decision-maker in all terminations, including MT's, he could not recall whether he had ever received any information relating to MT's conduct. Significantly, there are only four terminations of facility employees in the record: Price, Ahmed, MT, and an employee who quit after not showing up (AM, below).

(B) JM:

Called out for scheduled shift (June 2, 2018).
Called out for scheduled shift (June 3, 2018.
No call/no show for scheduled shift (June 9, 2018).
Called out for scheduled shift (June 10, 2018).

(C) AM:

Called off 45 minutes before scheduled shift, the third time in 3 weeks (May 11).
Dismissal for not showing up on May 15 and stating that she was quitting when Schram called her (May 15).

(D) SM:

Failed to report or give notice (February 26).
Failed to report or give notice (April 15 and 16).

(E) TP:

Arrived 1 hour late for shift (November 13).
Arrived 28 minutes late after calling and saying she would be late due to having a migraine (December 18).
YH:

Left work an hour early without informing the on call, after previous counselings (December 28, 2018)
Unsatisfactory performance, including improper punching out (January 22, 2019).

(F) BS:

Did not report, Schram called her, and she arrived 48 minutes late (September 25).

She also received five warnings for unsatisfactory performance, from December 4, 2017–January 25, 2018, including working on personal matters instead of her assigned work, for which she had previously been warned several times (GC Exh. 19).

(H) JK:

Arrived 24 minutes late (December 26).
He also received three warnings for unsatisfactory conduct, from January–March 2018, including sleeping on the job for the second night in a row, for which he had been counseled the day before (GC Exh. 18).

Three other employees arrived 16 minutes, 38 minutes, and 1 hour and 13 minutes late (2018), respectively; and another employee called out 1 hour before the start of the shift.

Analysis and Conclusions

The 8(a)(1) Allegations

(a) On August 21, 2017, interrogated Price about his union membership, activities, and sympathies; and the union membership, activities, and sympathies of other employees.

(b) In the same conversation, threatened Price that the Respondent would shut down operations at the facility and open a new facility in a different geographical location if employees selected the Union as their bargaining representative.

(c) About August, told Price that he would be able to run his business how he saw fit even if employees selected the Union to be their bargaining representative, and that it would be futile for employees to select the Union as their bargaining representative.

I. (a) and (b). When Price returned from the August 21 meeting at the Union's office, Schram asked what was discussed, and Price recited the better benefits and working conditions that the employees were seeking from union representation. Schram shook his head and said that the employees were asking way too much; Rich would not approve any of it; and Rich would just shut the place down, and he (Schram) would do the same.

Interrogations of employees do not per se violate Section 8(a)(1); instead, the Board uses a totality-of-circumstances test to determine whether an interrogation is coercive of employees' rights under the Act. *Rossmore House*, 269 NLRB 1176, 1177 (1984), enfd. sub nom *HERE, Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985); see also *Emery Worldwide*, 309 NLRB 185, 186 (1992). Factors to be considered include any background unfair labor practices (ULPs), the nature of the information sought, the level of the questioner (how high in the supervisory chain), the place and method of interrogation, and the truthfulness of the reply. *Westwood Health Care Center*, 330 NLRB 935, 939 (2000); *Bourne v. NLRB,* 332 F.2d 47, 48 (2d Cir. 1964). Other considerations are whether the employee is an open and active union supporter (*Sunnyvale Medical Clinic*, 277 NLRB 1217, 1218 (1985), and whether the employer has a legitimate reason justifying interrogation concerning protected activities. *Foamex, Inc.*, 315 NLRB 858 (1994).

In the absence of any coercive statements, I would conclude that Schram's interrogation did not violate the Act. Schram already knew that Price was the leading union organizer, had given him permission to go the meeting, and did not ask him which other employees had attended.

However, I find that Schram violated Section 8(a)(1) by threatening Price that the facility would be shut down in

connection with the employees seeking union representation. See *Shearer's Foods, Inc.*, 340 NLRB 1093, 1094 (2003). This overt threat tainted the attendant interrogation and made it similarly coercive. See *Emery Worldwide*, above at 186–187; see also *Hoffman Fuel Co.*, 309 NLRB 327, 327 (1992) (questioning accompanied by a veiled threat found unlawful even when the interrogated employee was an open and active union supporter).

II. (c). Schram stated that he wanted to work with Price if the Union passed because he did not want Price to file grievances against him for covering shifts for CAs instead of giving them more hours. He further stated that he believed he still had the right to run the day-to-day operations as he saw fit.

The General Counsel contends (GC Br. at 27) that Schram's statements conveyed a sense of futility for voting for the Union. I disagree. In *Queen of the Valley Medical Center*, 368 NLRB No. 116, slip op. at 2 (2019), the Board addressed a director's statement very similar to Schram's ("[u]nion or no union, I'm going to run this department as I see fit") and concluded that it was "too vague to suggest that the Respondent would not comply with its duty to bargain in good faith if the Union was certified as the employees' representative." Similarly, Schram's statement that he believed he still had the right to run the day-to-day operations was couched in terms of his own opinion (as a first-line supervisor) and in no way implied that he was speaking on the Company's behalf. Accordingly, I find no merit to this allegation.

(d) About September 20, told employees that they were supposed to communicate with him and tell him what was going on regarding the union organizing campaign.

No evidence supports this allegation, and I therefore recommend its dismissal.

(e) About late October or early November, threatened Ahmad and Nash that the Respondent would shut down the facility if the employees selected the Union as their bargaining representative.

(f) About late October or early November, threatened Ahmad and Nash that he would have to act like a boss and would strictly enforce policies and/or rules if the employees selected the Union as their bargaining representative.

In late October, in Schram's office, Schram asked if he could talk to Ahmad because the petition had been filed and stated that if the employees formed a union, the facility would be shut down.

In late October or early November, Schram called Ahmad and Nash into his office. He asked them how they were going to vote in the election and said that they should vote against the Union because if the Union got in, (1) the facility probably would be closed down; (2) their wages probably would drop because they would have to pay union dues; and (3) he would have to be stricter on them as a boss.

I find that these statements of negative consequences should the employees choose union representation reasonably tended to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. See *Remington Lodging & Hospitality, LLC*, 363 NLRB No. 112, slip op. at 1 fn. 1 (2017) (stricter enforcement of work rules); *Shearer's Foods,* above (facility closure); and *Ernst Enterprises, Inc.*, 289 NLRB 565, 565 fn. 1 (1988) (reduction of wages). Therefore, these allegations are sustained.

Schram asked Ahmad and Nash how they were going to vote. This is not alleged in the complaint. However, under well-established precedent, the Board may find a violation not alleged in the complaint, even where the General Counsel has not filed a motion to amend, if the issue is closely related to the subject matter and has been fully and fairly litigated. *Enloe Medical Center*, 346 NLRB 854, 854, 854 fn. 3 (2006), citing *Desert Aggregates*, 340 NLRB 289, 292–293 (2003). Here, the violation was contained in the same conversation in which Schram made other statements that violated the Act, and Schram had an opportunity to testify thereon. Accordingly, I find that Schram further violated the Act by interrogating Ahmad and Nash about their union sympathies.

(g) On November 5, interfered with employees exercising their Section 7 rights by telling Nash that Ahmad was strongly opinionated and that he did not want Ahmad to fill her head with propaganda.

Schram called Nash on November 5 and left a message on her cell phone, during which he stated that he did not want her to go with the Union, did not want Ahmad to fill her with propaganda, and wanted to help the employees and could do so as a boss.

In *Baker Concrete Construction, Inc.*, 341 NLRB 598, 598 (2004), the Board held that a superintendent's warning to an employee to stay away from union supporters, or "you [could] have trouble" was too vague to constitute a threat of reprisal and was not an indicum of antiunion animus. Here, although Schram's statement reflected antagonism toward Ahmad, it did not direct or suggest that Nash refrain from any union activity, and it carried no express or implicit threat of reprisal against her, Ahmad, or any other employee. I therefore conclude that this allegation has not been sustained.

The Respondent cites (R. Br. at 37, et. seq.) *Yellow Ambulance Service*, 342 NLRB 804, 810 (2004), for the proposition that any statements that Schram made were de minimis and did not rise to the level of unfair labor practices. However, that decision is inapposite because it involved an alleged 8(a)(3) violation in requiring employees to fill out new applications to switch from full-time to part-time status, not coercive statements. On the contrary, the Board in *AT Systems, West, Inc.*, 341 NLRB 57, 62 (2004), reversed a judge's finding that a threat ("clearly a coercive statement") was de minimis.

(h) Allowing price and Turner to attend union organizational meeting.

The General Counsel contends that the Respondent violated Section 8(a)(1) by allowing Price and Turner to attend union organizational meetings during work times from June 19 until August 31.

An employer violates the Act by conferring employee benefits during the pendency of a representation election for the purpose of inducing employees to vote against a union. *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678, 679, 686 (1944); *Shamrock Foods Co.*, 369 NLRB No. 5 (2020), cited by the General Counsel (GC Br. at 30) (extra pay to employees for attending company's annual banquet).

Those cases are inapposite. Here, the benefit that Schram bestowed aided the efforts of employees who were seeking to organize, and I can see no way in which it reasonably could have induced employees to vote against the Union. This was not a

situation where competing unions were seeking to represent unit employees and Schram was showing partiality to one over the other. Accordingly, I find no merit to this allegation.

The 8(a)(3) and (4) Analytical Framework

In cases in which the issue is the motive behind an employer's action against an employee (was it legitimate or based on animus on account of the employee's union or protected concerted activities?), the appropriate analysis is provided by *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); see *Mondelez Global, LLC*, 369 NLRB No. 46, slip op. at 1 (2020); *Auto Nations, Inc.*, 360 NLRB 1298, 1301 (2014), enfd. 801 F.3d 767 (7th Cir. 2015).

Under *Wright Line,* the General Counsel bears the initial burden of establishing that an employee's union or other protected concerted activity was a motivating factor in the employer's adverse employment action. *Wright Line*, above at 1089. The Board has held that the General Counsel can meet this burden by establishing (1) union or other protected activity by the employee, (2) employer knowledge of that activity, and (3) anti-union animus, or animus against protected activity, on the employer's part. See, e.g., *Consolidated Bus Transit*, 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009). In *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 5–8 (2019), the Board clarified the animus element of this test, explaining that the General Counsel "does not *invariably* sustain his burden of proof under *Wright Line* whenever, in addition to protected activity and knowledge thereof, the record contains *any* evidence of the employer's animus or hostility toward union or other protected activity." Id., slip op. at 7 (emphasis in original). "Instead, the evidence must be sufficient to establish that a causal relationship exists between the employee's protected activity and the employer's adverse action against the employee." Id., slip op. at 8.

Once the General Counsel makes out a prima facie case, the burden shifts to the respondent to show that the same action would have taken place even in the absence of the protected activity. *Wright Line*, above at 1089; *Manno Electric, Inc.*, 321 NLRB 278, 280 fn. 12 (1996). To establish this affirmative defense, an employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity. *East End Bus Lines, Inc.*, 366 NLRB No. 180, slip op. at 1 (2018); *Consolidated Bus Transit*, 350 NLRB 1064, 1066 (2007). Where the General Counsel has made a strong showing of discriminatory motivation, the employer's defense burden is substantial. *Bally's Park Place, Inc.*, 355 NLRB 1319, 1321 (2010), enfd. 646 F.3d 929 (D.C. Cir. 2011); *East End Bus Lines*, ibid.

The *Wright Line* analysis also applies to alleged violations of Section 8(a)(4). *Freightway Corp.*, 299 NLRB 531, 532 fn. 4 (1990); *P.I.E. Nationwide*, 295 NLRB 382 (1989). Section 8(a)(4) covers the conduct of an employee who appears at a Board hearing even though he or she did not testify. *Belle Knitting Mills, Inc.*, 331 NLRB 80, 103 (2000); *Virginia-Carolina Freight Lines, Inc.*, 155 NLRB 447, 452 (1965).

Price's Discharge

Price spearheaded the union organizing campaign at the facility and attended union organizing meetings, and Schram had actual knowledge of this. Schram and Teel also had actual knowledge that Price attended the R case hearing on September 27 on behalf of the Union.

Turning to animus, Schram committed several violations of Section 8(a)(1) both before and after Price's discharge. On August 21, he threatened Price that the Respondent would shut down the facility if the employee unionized. On two occasions in late October or early November, he made the same threats to Ahmad and Nash, as well as threatening them with stricter enforcement of work rules if the Union was voted in.

Several factors directly relating to Price's discharge are evidence of implied animus against him for his union/protected activity.

(1) Timing

Price was discharged almost immediately after attending the R case hearing on September 27. Such timing evidences a causal link between that protected activity and his loss of employment. *Mondelez Global*, above, slip op. at 1; *Velox Express, Inc.*, 368 NLRB No. 61, slip op. at 10–11 (2019).

(2) Cursory investigation

Rich made the decision to discharge Price without ever having afforded Price an opportunity to respond—and without even inquiring of Schram, Price's supervisor, the circumstances surrounding Price's conduct that day. A truncated investigation of alleged misconduct, without affording an employee a reasonable opportunity to respond, amounts to a failure to conduct a meaningful investigation and is evidence of unlawful motive. *Mondelez Global*, above, slip op. at 1; *Airgas USA, LLC*, 366 No. 104, slip op. at 3 fn. 12 (2018).

(2) Disparate treatment

Of the four terminations in the record, two were of Price and Ahmad. One of the others was a voluntary quit, and the last was of employee MT.

The Respondent demonstrated an incredibly lenient policy toward employees who violated attendance and other policies. The best example of this was MT. Prior to her termination in October 2017, after she walked out and said, "Fuck this shit," she had received written warnings for the following:

> Insubordination (February 9).
> Improper notification for calling out for shift (June 30).
> Arrived 40 minutes late without calling (August 30).
> Arrived to work 22 minutes late (September 13).
> Did not come into work and claimed unaware that she was scheduled when Schram called her (September 18).
> Arrived 22 minutes late (September 27).
> Suspended for arriving 22 minutes late and clocking out early without notifying director (September 30).
> Insubordination when presented write-up for being late (October 2).

Moreover, she had arrived late eight times between June 6–September 26, from 7 minutes to 52 minutes.

The following employees received repeated written warnings but were not suspended or terminated. JM called out for his scheduled shift on June 2, 3, and 10, and was a no call/no show

on June 9. SM failed to report or give notice on February 26, and April 15 and 16. BS received one warning for arriving 48 minutes late on September 25 and 5 warnings for unsatisfactory performance, from December 4, 2017–January 25, 2018, including working on personal matters instead of her assigned work, for which she had previously been warned several times. Finally, JK arrived 24 minutes late (December 26) and received three warnings for unsatisfactory conduct, from January–March 2018, including sleeping on the job for the second night in a row, for which he had been counseled the day before.

Clearly, the discharge of Price was far out of proportion to the way the Respondent disciplined other employees, some of whom had repeated instances of misconduct. Disparate treatment of the alleged discriminatees, i.e., disciplining them more severely than other employees who engaged in similar or more egregious misconduct, is evidence of unlawful motive. *Mondelez-Global*, ibid.; *Tschiggfrie*, supra, slip op. at 5; *Ozburn-Hessey Logistics, LLC v. NLRB*, 833 F.3d 210, 223–224 (D.C. Cir. 2016).

Based on the above factors, I conclude the General Counsel has satisfied the animus prong of *Wright Line* and therefore made out a prima facie case.

The Respondent contends that Price's conduct on September 27 amounted to job abandonment. For a number of reasons, I further conclude that the Respondent has not shown that it would have discharged Price other than for his protected activities.

Granted, Price could have exercised better judgment and returned to work immediately after the R case hearing concluded. However, Schram condoned or tacitly approved Price's conduct that day. Schram knew on the morning of September 27 that Price clocked in at 5:31 a.m. and was going to the R case hearing ("Court versus Bannum"), took no steps to reach Price at any time during the day, said nothing to Price when he returned in the afternoon, and did not recommend any discipline against him. Despite the Respondent's failure to call Teel, it is clear from Schram's and Rich's testimony that she initiated the investigation into Price's activities that day after she saw him at the R case hearing. For reasons I stated, I draw an adverse inference against the Respondent for not having called her.

The Respondent contends that Price was supposed to accompany Schram to the Bay County Jail hearing that day. I credit Price—supported by Schram's conduct—that he had told Schram he was going to the R case hearing and could not go to the jail. In any event, the Respondent's argument fails. Schram testified that he could not get someone else to go with him on September 27, so he did not go, but he could not recall if he ever went for that hearing on any subsequent day. I have to conclude from this testimony that either the jail hearing never took place or that the Respondent's attendance was not required.

Significantly, Price had previously received only one written warning at most (there is nothing in the Company's records). In contrast, numerous other employees, MT in particular, received written warnings for repeated attendance violations and/or unsatisfactory performance, including not showing up for work (SM, for example, failed to report or give notice on 3 days, 2 of which were in a row), insubordination, and not properly performing job duties.

Because the Respondent has failed to rebut the General Counsel's prima facie case, I conclude that Price's discharge violated Section 8(a)(3), (4), and (1) of the Act.

Actions Taken Against Ahmad

Ahmad supported the Union and prior to the August 7 union meeting, he discussed it with Price and Turner in the conference room. Schram came over during their discussion and said that he supported their efforts, thus establishing employer knowledge of Ahmad's union sympathies and activities. Moreover, shortly after Schram's arrival, Schram questioned Ahmad concerning whether there was a union at Ahmad's full-time job, and during the course of their conversation, Ahmad said that he was the union's chapter president.

Express animus is demonstrated by Schram's voice mail to Nash on November 5 (the same month that all of the alleged discriminatory conduct against Ahmad took place). Schram stated that he did not want her to vote for the Union or for Ahmad to fill her with (union) propaganda.

Implied animus can be found in the following:

(1) Timing

The above voice mail, in which Schram demonstrated animus toward Ahmad for his union activities or sympathies, occurred only a week or two before the Respondent made changes to Ahmad's schedule in about mid-November. Furthermore, Schram committed further 8(a)(1) violations in late October and early November toward Ahmad and Nash. 8(a)(1) violations occurring close in time to an adverse action against an employee are "particularly relevant" as far as showing unlawful motivation. *East End Bus Lines*, above at slip op. at 9; see also *St. Mary Medical Center*, 339 NLRB 381, 381 (2003).

(2) Cursory investigation before Ahmad's discharge

As was the case with Price, Rich made the decision to discharge Ahmad without ever having afforded Ahmad an opportunity to respond and without speaking to Schram. See the cases cited above.

(3) Disparate treatment in discharging Ahmad

For the same reasons that I set out for Price, the discharge of Ahmad was way out of proportion to the discipline meted out to other employees, particularly those who engaged in repeated attendance and/or other derelictions. See the cases cited above. It is noteworthy that Ahmad previously had no disciplines of any kind in the over 1-year period that he worked for the Respondent.

Accordingly, I conclude that the General Counsel has established a prima facie case that the actions that the Respondent took against Ahmad in November were for his union sympathies or activities. I now turn to each specific action and whether the Respondent has rebutted the presumption that they were improperly motivated.

(a) About mid-November, 2017, scheduled Ahmad to work on the second shift

Schram offered only a vague, unsupported reason for his mid-November announcement that all CAs such as Ahmad would now have at least 2 consecutive days off, and he gave no reason whatsoever for the timing of that change. At around this time, Schram assigned Ahmad to work a second shift the week of December 3, knowing that would conflict with Ahmad's full-time job. When Ahmad asked why Schram did this, Schram did not

respond.

Based on the above, I conclude that the Respondent did not rebut the presumption that changing Ahmad's schedule was motivated by his union activities or sympathies.

(b) On about November 7 and 8, denied Ahmad's November 12 and 18 vacation requests

Nash, who was employed for over a year, never had a vacation request denied, and she testified that Schram assumed the position of the second staff member on duty when he could not find another CA to work with her on the third shift. Schram confirmed that he filled in when neither he nor the employee who wanted leave could find someone to substitute. It is impossible to know how many vacation requests have been denied because the large majority of them were verbal; General Counsel's Exhibit 12 contains only five vacation request forms from April 2017 to April 8, 2019. Two of them were from Ahmad, who was denied two of the three requested days. The other two employees requested one, five consecutive, and seven consecutive days, and nothing on the forms indicates that any of them were denied. In sum, the Respondent provided no evidence, either testimonial or documentary, that any employees other than Ahmad have had their vacation requests denied. The Respondent has therefore failed to rebut the presumption that its conduct was improperly motivated.

(*c) On November 12, required Ahmad to submit a doctor's note when requesting sick leave*

Contrary to Rich, Schram testified that doctor's notes are not ordinarily required for employees who call in sick. An employee's calling in sick on a day for which he was denied leave might raise a reasonable suspicion, but Schram testified that he required Ahmad to produce a doctor's note because Ahmad engaged in a "pattern" of calling in sick when his leave request had been denied. Ahmad had no previous disciplines of any kind, either for attendance or otherwise, in his over 1 year of employment. Therefore, Schram would have had to base his conclusion on Ahmad's calling out sick on only 1 day, November 12. This is patently unbelievable. Demanding that an employee with an unblemished attendance record get a note for being sick 1 day is not within reasonable norms, especially w
en November 12 was a Sunday. Accordingly, I conclude that the Respondent has failed to rebut the presumption that this conduct was improperly motivated.

(d) On November 21, discharged Ahmad

The Respondent discharged Ahmad for his calling out on November 12 on sick leave and on November 18 for a family emergency, when Schram had previously denied him vacation leave for those days. Rich testified that he considered Ahmad's conduct of calling in sick twice on days that he had been denied vacation leave (a factual error) an "integrity issue" justifying termination.

Ahmad was sick on a Sunday, and the following day was a holiday. On November 14, he went to his doctor and received a note stating that he was seen that day, that he had had a contagious illness on November 12, and to contact the doctor with any questions. He submitted it to Schram. Schram testified that he found the note unsatisfactory because it was after the fact. How he could have expected Ahmad to go to a doctor on a Sunday, when he was sick, is beyond my comprehension. Moreover, Schram failed to take the opportunity to call the doctor if he wanted more information about the nature of Ahmad's illness on

November 12. I reject out of hand as absurd Rich's testimony that if Ahmad was ill on November 12, he should have gone to a clinic that same day and obtained proof that he was sick and could not work.

Ahmad called in shortly before his scheduled shift on November 18 and said that he could not come in because of a family emergency. Schram simply said okay. At no time did Schram, Teel, or Rich give Ahmad an opportunity to provide any elaboration (Ahmad testified that his son was "tearing up" the house).

I further note Rich's testimony that he made the decision to discharge Ahmad based solely on his conversations with Teel and Allen. Thus, by his own testimony, he neither talked to Schram nor saw Schram's written recommendation.

I conclude that the Respondent has failed to rebut the presumption that Ahmad's discharge was based on his union sympathies and activities. I emphasize here that prior to his discharge, Ahmad had a perfect record as far as discipline, and that the Respondent continued to issue written warnings to employees who repeatedly committed violations of its attendance and other policies, even those who repeatedly failed to report for their shifts and/or did not call in or report. Accordingly, Ahmad's discharge violated Section 8(a)(3) and (1) of the Act.

Alleged Unilateral Changes

An employer violates Section 8(a)(5) and (1) of the Act by unilaterally making substantial changes on subjects of mandatory bargaining; to wit, employees' wages, hours, or other terms and conditions of employment, without first affording notice and a meaningful opportunity to bargain to the union representing the employees. *NLRB v. Katz*, 369 U.S. 736 (1962); *United Cerebral Palsy of New York City*, 347 NLRB 603, 608 (2006).

The Board has held that an announcement of a unilateral change in benefits can in certain situations constitute a violation of Section 8(a)(5) and (1) in and of itself and regardless of implementation. Those decisions generally concern scenarios in which an employer has threatened and implemented a unilateral reduction in employee benefits in conjunction with the commission of other ULPs. See *Kurdziel Iron of Wauseon, Inc.,* 327 NLRB 155, 156 (1998), enfd. 208 F.3d 214 (6th Cir. 2000); *ABC Automotive Products Corp.,* 307 NLRB 248, 250 (1992). Similarly, in *UPS Supply Chain Solutions, Inc.,* 346 NLRB 62 (2016), following a union's certification, the employer announced unilateral reduction in health insurance benefits and then refused to bargain prior to implementation.

(1) Requiring Ahmad to submit vacation request forms

This is not alleged as an 8(a)(3) violation but as an 8(a)(5). However, there is no indication that this change was applied to any other employees; rather, it appears that Ahmad was targeted. Indeed, Schram accepted Nash's December 16 handwritten vacation request in lieu of a vacation request form, and there are only five vacation request forms for the 2-year period starting in April 2017. The form was in existence before union organizing began at the facility, and its use has continued to be minimal thereafter. Accordingly, I do not find that the Respondent's requiring Ahmad to use the form constituted a unilateral change in employees' terms and conditions of employment.

(2) Denying Ahmad's vacation requests

I have found that this violated Section 8(a)(3). The Respondent's conduct was discriminatory because Ahmad was targeted on account of his union sympathies and activities. Finding it also constituted a unilateral change in policy toward all employees would be inconsistent with such a finding. In any event, the denial of Ahmad's vacation requests was particular to him and did not implicate any other employees. Therefore, I find that it was not a unilateral change and recommend dismissal of this allegation.

(3) Announced changes in Ahmad's schedule

Ahmad's schedule was never in fact changed because he was discharged before any announced change were effectuated. The General Counsel contends that the announced change in mid-November that starting December 3, all CAs would have at least two consecutive days off, was a unilateral change. However, there is no evidence that it adversely affected any employees other than Ahmad or that the policy was in fact implemented and applied to other employees after Ahmad's discharge. Accordingly, I conclude that the General Counsel has not established that the Respondent violated Section 8(a)(5) and (1) with respect to changing work schedules.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging Greg Price, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(3), (4), and (1) of the Act.

4. By the following conduct toward Ernie Ahmad, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(3) and (1) of the Act:

(a) Scheduled him to work on the second shift.
(b) Denied his vacation requests.
(c) Required him to submit a doctor's note for calling in sick.
(d) Discharged him.

5. By the following conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(1) of the Act:

(a) Interrogated employees about their union activities or sympathies.
(b) Threatened employees with closure of the facility, wage reductions, and stricter enforcement of rules if the employees voted in the Union.

REMEDY

Because I have found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged Greg

Price and Ernie Ahmad, it must offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and to make them whole for any losses of earnings and other benefits suffered as a result of their discharges. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In addition, the Respondent shall compensate Price and Ahmad for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years. See *Advoserv of New Jersey, Inc.*, 363 NLRB No. 143 (2016); *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014). The Respondent shall compensate Price and Ahmad for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable next backpay, with interest at the rate prescribed in *New Horizons*, above, compounded daily as prescribed in *Kentucky River Medical Center*, above.

The General Counsel also seeks an order requiring the Respondent to provide W-2 forms to the Regional Director (GC Br. at 45, et. seq.). The General Counsel argues that this will assist in the effective administration of the Social Security Administration (SSA)-allocation remedy set out in *Tortillas Don Chavas*, above, by ensuring accuracy and consistency between the W-2 forms and the reports that the Regional Director receive from respondents and transmits annually to SSA. I am not in a position to judge the merits of this argument because I am obliged to follow existing Board precedent. See *Pathmark Stores, Inc.*, 342 NLRB 378, 378 fn. 1 (2004); *Waco, Inc.*, 273 NLRB 746, 749 fn. 14 (1984). Inasmuch as the Board has not ordered this remedy, I must deny the General Counsel's request for such.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[18]

ORDER

The Respondent, Bannum Place of Saginaw, LLC, Saginaw, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employee for engaging in union activity.

(b) Discharging or otherwise discriminating against employees for attending NLRB hearings or otherwise participating in NLRB proceedings.

(c) Interrogating employees about their union activities or sympathies.

(d) Threatening employees with facility closure, wages reductions, or stricter enforcement of work rules because of their support for Local 406, International Brotherhood of Teamsters (IBT).

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Greg Price and Ernie Ahmad full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Price and Ahmad whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges of Price and Ahmad, and within 3 days thereafter notify them in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Saginaw, Michigan, copies of the attached notice marked "Appendix."[19] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If during the pendency of these proceedings, the Respondent has gone out of business or closed the Saginaw, Michigan facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 21, 2017.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 29, 2020

APPENDIX

NOTICE TO EMPLOYEES

[18] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board (NLRB) has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

Local 406, International Brotherhood of Teamsters (IBT) (the Union) represents a unit of our all regular full-time and part-time social service coordinators, case managers, and counselor aides.

WE WILL NOT discharge or otherwise discriminate against you because you engage in union activity.

WE WILL NOT discharge or otherwise discriminate against you because you attend NLRB hearings or otherwise participate in NLRB proceedings.

WE WILL NOT interrogate you about your union activities or sympathies.

WE WILL NOT threaten you that the facility will be closed, with wage reductions, or with stricter enforcement of work rules because of your support for the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the Act, as set forth at the top of this notice.

WE WILL within 14 days from the date of the Board's Order, offer Greg Price and Ernie Ahmad full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Price and Ahmad whole for any loss of earnings and other benefits suffered as a result of our discrimination against them, in the manner set forth in the remedy section of the decision.

WE WILL remove from our files any reference to our unlawful discharges of Price and Ahmad, and within 3 days thereafter notify them in writing that this has been done and that the discharges will not be used against them in any way.

BANNUM PLACE OF SAGINAW, LLC

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/07-CA-207685 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.